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No. 03-1293

Supreme Court, U.S.
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In The

Supreme Court of the United States

DAVID WHITFIELD,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ Of Certiorari To The Court Of Appeals For The Eleventh Circuit

REPLY BRIEF FOR PETITIONER

DAVID WHITFIELD
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Petitioner

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REPLY BRIEF FOR PETITIONER

The Respondent, UNITED STATES OF AMERICA, contends that there are essentially two reasons why this Court should not take the time to settle the dispute between the federal circuit courts on the question presented: Whether a conviction for conspiracy to commit money laundering, in violation of 18 U.S.C. § 1956(h), requires proof of an overt act in furtherance of the conspiracy? The government's brief in opposition (Opp.) first paints a picture that this Court's decision in *United States v. Shabani*, 513 U.S. 10 (1994), clearly settled the issue. The second stroke of the very same brush gives the illusion that there really isn't a split among the federal circuits on the question presented in the case *sub judice*. Opp. 4-7. Given the Eleventh Circuit's decision in this case, wherein it clearly recognized and duly noted the division amongst the circuit courts on the question presented here, Mr. Whitfield respectfully submits the government's suggestions are simply disingenuous. So too is the government's claim that through time the federal circuits who have decided, post-*Shabani*, that an overt act is required to sustain a conviction for conspiracy to commit money laundering, will come to realize that they were wrong in their decisions. For the reasons stated below and in his petition, Mr. Whitfield respectfully submits this Court should and must resolve this most important federal question since the outcome not only affects how the government prosecutes a case, but more importantly, the manner and method by which to apply the law to individuals throughout this country as intended by Congress.

1. At the outset, the Eleventh Circuit has noted the circuit split on the question whether an overt act is an essential element for conviction of conspiracy to commit

money laundering, *United States v. Hall*, 349 F.3d 1320, 1323 (11th Cir. 2003). Although the appellate court sided with the minority of the circuits, contrary to the government's claim, there is a definitive split on the legal interpretation and application of the money laundering conspiracy statute, Title 18 U.S.C. § 1956(h) – now that is a given. Unlike the government, the Eleventh Circuit did not distinguish the circuits' decision as a reliance on *dicta* for a very good reason, the decisions generated by the appellate courts were something more than *judicial dictum* or *obiter dictum*.

In evaluating dicta, "[m]uch depends on the character of the dictum. Mere obiter may be entitled to little weight, while a carefully considered statement . . . , though technically dictum, must carry great weight, and may even . . . be regarded as conclusive." Charles A. Wright, *The Law of Federal Courts* § 57, at 374 (4th ed. 1983). Here, the decisions of the appellate courts, which have expressly held or otherwise affirmatively stated that an overt act is an essential element for a conviction for conspiracy to commit money laundering carefully, considered the issue. In Mr. Whitfield's judgment, and apparently the judgment of the federal appellate courts who adhered to the decisions by the Third Circuit in *United States v. Conley*, 37 F.3d 970 (3rd Cir. 1994), the Fifth Circuit in *United States v. Wilson*, 249 F.3d 366 (5th Cir. 2001), the Eighth Circuit in *United States v. Hildebrand*, 152 F.3d 756 (8th Cir. 1998), and the Tenth Circuit in *United States v. Hand*, 1995 WL 743841, 76 F.3d 393 (10th Cir. 1995), it would be blinking reality to pass off the aforementioned appellate courts' decision regarding the requirement of an overt act as a chance statement. This conclusion draws the grease from the goose.

2. Having shown the circuit split is genuine, this begs the question whether this Court should resolve the

split or simply see if it can resolve itself over time, as the government now suggests. The answer lies in this Court's decision in *Braxton v. United States*, 500 U.S. 344, 11 S.Ct. 1854 (1991) where Justice Scalia delivered the opinion for this Court:

> A principal purpose for which we use our certiorari jurisdiction, and the reason we granted certiorari in the present case, is to resolve conflicts among the United States courts of appeals and state courts concerning the meaning of provisions of federal law. See this Court's Rule 10.1. With respect to federal law apart from the Constitution, we are not the sole body that could eliminate such conflicts, at least as far as their continuation into the future is concerned. Obviously, Congress itself can eliminate a conflict concerning a statutory provision by making a clarifying amendment to the statute, and agencies can do the same with respect to regulations. Ordinarily, however, we regard the task as initially and primarily ours.

Braxton, 500 U.S. at 347-48. This Court also has consistently held that "[p]rudence also dictates awaiting a case in which the issue was fully litigated below, so that [the Court] will have the benefit of developed arguments on both sides and lower court opinions squarely addressing the question." *Yee v. Escondido*, 503 U.S. 519, 538, 112 S.Ct. 1522 (1992) (citing *Lytle v. Household Mfg., Inc.*, 494 U.S. 545, 552 n. 3, 110 S.Ct. 1331 (1990) ("Applying our analysis . . . to the facts of a particular case without the benefit of a full record or lower court determinations is not a sensible exercise of this Court's discretion").

Where as here, the federal circuit courts are still split over the issue concerning the money laundering conspiracy statute years after this Court's decision in *Shabani*,

heightens the concerns and needs for this Court to intercede and make clear what Congress has failed to do. As the Chief Justice has explained:

> [B]orne out time and again in our decisions to grant or deny certiorari, is that ordinarily a court of appeals decision interpreting one of our precedents – even one deemed to be arguably inconsistent with it – will not be reviewed unless it conflicts with a decision of another court of appeals. This fact is a necessary concomitant of the limited capacity in this Court.

Hubbard v. United States, 514 U.S. 695, 720, 115 S.Ct. 1754 (1995) (Rehnquist, C.J., dissenting). The instant case now before the Court contains every ingredient and otherwise meets the criteria set forth by this Court to grant certiorari. The passing of time has not resolved the split as the record plainly demonstrates, nor has Congress sought fit to make clear what it intended under the money laundering conspiracy statute. Moreover, should this Court deny certiorari in the instant case, the division among the circuit courts will continue since nothing can be inferred from said denial. *See, United States v. Carver*, 260 U.S. 482, 490, 43 S.Ct. 181 (1923) ("The denial of a writ of certiorari imports no expression of opinion upon the merits of the case, as the bar has been told many times").

The public's confidence in the fair administration of justice is at stake here – to explore the relative harm to Mr. Whitfield and the government, as well as the interests of the public at large clearly would be appropriate in this case by the Court, or so Mr. Whitfield opines. To say more here would be supererogatory! The instant case has been fully argued below by the parties and squarely decided on by the Eleventh Circuit on the question presented before

this Court. Simply put, the issue of whether an overt act is an essential element for conviction for conspiracy to commit money laundering is *ripe* for review by this Court. It is axiomatic that this case is not only deserving of this Court's attention given the circuit courts' split, but resolution by this Court, in order to preserve the integrity of the criminal justice system and to maintain equal application of the federal laws in this country.

CONCLUSION

For the foregoing reasons, and for those in the petition, the petition for writ of certiorari should be granted, the judgment of the Eleventh Circuit vacated, and Mr. Whitfield's conviction for conspiracy to commit money laundering reversed. Mr. Whitfield further requests other relief this Court deems proper and just.[1]

Respectfully submitted,

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[1] Mr. Whitfield is proceeding here *pro se* and without the assistance of competent counsel. Although he is being assisted by an inmate paralegal specialist, he requests this Court to exercise its discretion in addressing itself to any legal theory that would bear on the issues raised. *See, United States v. Dickerson*, 166 F.3d 667, 669 (4th Cir. 1999).

Mr. Whitfield further requests this Court to liberally construe his petition in order to do substantial justice. *See, Haines v. Kerner*, 404 U.S. 519, 520-21, 92 S.Ct. 594, 596 (1972). Should this Court grant certiorari in this case, Mr. Whitfield will employ counsel to fully brief and argue the merits of the case before the Court.